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## Review of North Dakota Decisions

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## REVIEW OF NORTH DAKOTA DECISIONS

*State vs. Thompson*: Defendant was indicted for a felony, tried and convicted. Subsequent to arraignment he was at liberty on bail; and, after submission of the cause to the jury, defendant went to a friend's home, without leaving word with any officer of the court. The jury returned with a verdict in a short time, and, although officers were sent to look for defendant, he could not be found. The court waited for nearly an hour and then received the verdict, which was "guilty". HELD: The right to be present at the rendition of the verdict may be waived by voluntarily absenting oneself. The progress of a trial can not be impeded by such voluntary absence. The contention that trial counsel was unable properly to represent defendant by reason of intoxication held not sustained by the record.

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*State vs. Morton County*: Certain real estate was sold to defendant for taxes, and taxes and hail indemnity liens for the years 1921, 1922, 1923 and 1924 subsequently became delinquent. The county then served notice of expiration of the period of redemption, whereupon the county was entitled to tax deed. Plaintiff then offered to pay the taxes, but the county claimed the amount due included the hail indemnity liens. The full amount was then paid and action brought against defendant for the recovery of the amount of the hail indemnity. HELD: That the right of redemption granted by Section 2202 of the Compiled Laws is in addition to that granted by Section 2197. It gives one having an interest in land a second chance by making him a preferred purchaser, but in order to avail himself of that right he must bring himself within the terms of the statute, which means paying the full amount due thereon.

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*State vs. Shahane*: While in act of attacking his wife the defendant's father was killed by knife in hand of defendant. Testimony introduced showed the deceased was subject to epileptic insanity, that he was dangerous at such times, that a fit was on at time of the attack on defendant's mother, who ran to defendant for protection and grabbed the arm holding the knife. Other specific acts of brutality and violence on the part of deceased were also presented, in rebuttal of which the State was permitted to show the deceased's general good reputation. The medical expert testifying as to the deceased's insanity was questioned as to the correctness of contradictory statements in a book on medical jurisprudence on cross-examination. HELD: Testimony of general reputation is not admissible to rebut proof of specific acts of violence; and the text of a medical book can not be used directly or indirectly in opposition to the testimony of a medical expert for the reason that the author is not under oath and not subject to cross-examination. New trial granted.

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*State vs. Rother*: Defendant, a bank president, received \$2,500 from one M. H. for investment. He delivered four notes held by the bank, personally guaranteeing payment. The notes not being paid, they were returned, and the bank's draft for \$1,700 was forwarded to M. H. A. "memo" note for \$1,700 (Signed "M. H. by R.") was inserted

in the bank's note pouch. This memo note was found among the bank's assets when examined by the state bank examiner. R. was not present at the examination at which the note was exhibited. At some previous examination an examiner had suggested that the "memo" note should be pinned to the original notes. This was not done, and it was carried as an asset for several years, and until it was ordered removed. Defendant was indicted, tried and found guilty. At the trial defendant moved to quash the indictment upon the ground that he had not been in custody at the time of the grand jury investigation, had no opportunity to challenge the grand jurors, one of whom was alleged to have acted in the capacity of a prosecutor rather than juror. Error was also alleged in the following instruction of the trial court: "Before you can find the defendant guilty you must find that A. (an officer of the bank present at the time of the examination) is guilty, and that R. aided and abetted or encouraged A. in committing the crime. In other words, it would be just the same as though A. was the defendant here or that they were both defendants. You have to find A. guilty before you can find R. guilty. If you should find A. guilty then you would have to find that R. aided and abetted A. in committing the crime". HELD: It is error, prejudicial to the rights of the defendant, for the trial court to refuse a defendant, who has moved to set aside an indictment on one of the grounds specified in Section 10728 Compiled Laws, opportunity to adduce proof in support of the motion. If a law is plain and within the legislative power it declares itself and the courts have only the simple and obvious duty to enforce the law according to its terms. The trial court also erred in giving the quoted instruction, as the question of whether R. intended to deceive the examiner was for the jury. New trial granted.

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### CO-OPERATIVE MARKETING

Bar Briefs gladly presents the following from Mr. B. H. Bradford, a member of the Committee on Uniform State Laws:

The legal profession of this state has the duty to assume leadership in public matters in the state and especially is this true with respect to all public matters pertaining to the system of jurisprudence. It should be unquestioned that any movement for a change of judicial procedure or practice should receive the sanction of the State Bar Association before it is molded into law. If the State Bar Association is not recognized by the Legislature to this extent, the fault must lie to a large degree with the Bar itself. This fault does not lie in any lack of ideals nor of effort on the part of the Bar Association. It is due largely to misunderstanding.

The lay members of the Legislature are prone to look with suspicion upon any act sponsored by the Bar Association and to surmise that the proposal is founded upon a desire to advance the interests of the members of the Bar. It is, of course, natural that the profession, through its association, should seek to raise its standards and strengthen its position in society, but aside from this the association, at each session of the Legislature, finds it necessary to present to the Legislature measures which are for the benefit of the whole people and which do not bear the slightest taint of selfishness. In order that these measures receive the consideration due them, it is neces-